



# MT Dept of Labor & Industry

## Sidney Job Service

### JSEC Quarterly



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Issue 14

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## Rights of Persons with Disabilities

Human Rights Website

<http://erd.dli.mt.gov/human-rights/montana-human-rights-laws/rights-of-persond-with-disabilities.html>

The Montana Human Rights Act and the Americans with Disabilities Act Amendments Act (ADAAA) prohibit discrimination in employment to an applicant or employee because of a physical or mental disability. An employer may have additional obligations under the Federal Family Medical Leave Act. For information regarding this law, see the U.S. Department of Labor website at [www.dol.gov](http://www.dol.gov) or call 1-866-487-9243.

### Employment Rights

Qualified persons with physical and mental disabilities:

- May not be refused an application, interview or employment because of their disability.
- May not be terminated or discharged because of their disability.
- Have the right to a reasonable accommodation which would allow them to perform the essential functions of their position.

### Who is Covered?

To be protected under the Montana Human Rights Act and the ADAAA, an applicant or employee with a disability must:

- Have a physical or mental impairment that substantially limits one or more major life activities; or
- Have a record of such as

impairment: or

- Be regarded or perceived as having such an impairment; **and**
- Be able to perform the essential functions of the position with or without accommodations.

*Employees should notify the employer if they need an accommodation and tell the employer what modifications are needed to perform the job.*

### Reasonable Accommodation

When a person is or becomes disabled, he or she may need a reasonable accommodation in order to remain active in the workforce. With an effective reasonable accommodation, an employee with a disability can perform the essential functions of the job and enjoy the same benefits and privileges as other non-disabled employees. Montanans employers and employees need to be aware of their rights and responsibilities when it comes to the provisions of reasonable accommodations. But, how do you figure out the right reasonable accommodation? The answer lies in a meaningful interactive dialogue.

An "interactive dialogue" or "interactive process" is an opportunity for the employer and the employee to have a discussion. The parties can discuss the essential functions of the job and to take a look at how a person's disability may impact the ability to perform those functions. With this in

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Richland County Commissioner

Craig Steinbeisser  
VS Inc/ Beet Growers Association

Jeremy Norby  
Norby Inc./Seitz Insurance

**New Members  
Welcome!!**



## Rights of Persons with Disabilities Continued

mind, they can begin to look at different ways to address the problem. In some cases, both the disability and the type of accommodation required will be obvious. If so, an in-depth dialogue will not be necessary. In other situations, the employer may need to gather more information concerning the nature of the disability and the individual's functional limitations in order for the parties to identify an effective accommodation. Fortunately, there are extensive resources out there to assist.

- Discuss the essential functions of the job ( a good job description is a great first step) or the privileges or benefits that are inaccessible;
- Discuss how the employee's impairment impacts the ability to perform the essential function of the job (this may require gathering more information);
- Bring ideas to the table about how to accommodate the impairment (it might be helpful to contact a neutral third party resource, such as JAN, and get their input.)
- Select and implement a reasonable accommodation; and then
- Monitor the accommodation.

It could be that the parties proceed through a good faith interactive process and realize that there is no reasonable accommodation that would allow the employee to continue with his or her employment. However, a meaningful dialogue will certainly increase the odds of finding a perfectly reasonable accommodation that will serve the interests of both parties.

### Examples of Reasonable Accommodations

- Making all application processes accessible to persons with disabilities
- Making existing facilities used by employees readily accessible to and usable by employees with disabilities.
- Restructuring the job; offering part-time or modified work schedules.

- Reassigning the employee to vacant positions they are qualified to hold
- Acquiring or modifying equipment or devices
- Adjusting or modifying examinations or training materials or policies as appropriate
- Providing qualified readers or interpreters.

### Perceived Disability

Under the ADAAA, those who are "perceived" as having disabilities are protected from employment discrimination based on stereotypes, fears, or misconceptions about disability. This protection applies to decision based on unsubstantiated concerns about productivity, safety, insurance, liability, attendance, and the costs of accommodation, accessibility, workers' compensation costs or acceptance by co-workers and customers.

### Links

Diversifying your workforce—A Four-Step Reference Guide to Recruiting, hiring, and retaining employees with disabilities.

[http://www.dol.gov/odep/documents/Flip%20Guide\\_Final\\_3%2030\\_508%20compliant2.pdf](http://www.dol.gov/odep/documents/Flip%20Guide_Final_3%2030_508%20compliant2.pdf)

Job Accommodation Network

<http://askjan.org/>

Montana Human Rights Website

<http://www.mhrn.org/>



# Montana's Small Businesses Targeted by Aggressive Companies

by Casey Kyler-West

The Department of Labor and Industry is hearing from small businesses who are tired of the aggressive marketing tactics of some companies who sell labor law posters.

"We are getting reports from Montana businesses that some of these companies are sending posters and demanding payment, despite the fact that the business didn't order them. These companies are even suggesting that by not purchasing the poster the business is breaking the law", said Labor Commissioner Keith Kelly. "We want to remind businesses if you get something in the mail you didn't order, you are not obligated in any way to pay for it. You can write did not order, return to sender on the envelope and send it back to the company."

The Five in One posters, which are available at no cost from the Department's Job Service Division, encompass Equal Employment Opportunity, Family and Medical Leave Act with Military Family Leave (employers with 50 or more employees), Federal Minimum Wage (Fair Labor Standards Act), and the Polygraph Protection Act. Federal regulations also require posting the Uniformed Services Employment and Reemployment Rights Act (USERRA). All posters are available at the Job Service offices.

Posters also required by Montana State Law include: Proof of Unemployment Insurance coverage (provided by the Department of Labor and Industry, Unemployment Insurance Contributions Bureau) and Proof of Workers' Compensation coverage, provided by Workers'

Compensation Insurance carrier. Employers are **not** required to post the State minimum wage.

Businesses that have returned the posters and are still getting invoices from the poster company can contact the Better Business Bureau at 1-800-356-1007 or file a complaint online at [www.bbb.org](http://www.bbb.org).

Businesses who would like to request a copy of the Federal Five in One poster can call (406)-444-4100 or their local Job Service Office. For more information log onto <http://wsd.dli.mt.gov/service/officelist.asp>

**The New Five in One Posters Have arrived.  
Stop by Sidney Job Service to pick up your  
FREE Poster.**



**If you or staff at your place of  
business are interested in  
participating in the  
Sidney Job Service  
Employers Committee, (JSEC)  
Please contact Jacklyn Damm at  
433-1204 # 204  
[jdamm@mt.gov](mailto:jdamm@mt.gov)**

**If anyone you know would like to receive this  
newsletter, please email us at**

**[sidnevjs@mt.gov](mailto:sidnevjs@mt.gov) \***

**We will add them to the list.**

**\* Note the email address has a slight change.**

## Interview Preparation

Flathead HR Toolkit <http://wsd.dli.mt.gov/local/sidney/employers.asp>

Review your job description and extract 6-10 major tasks, identify the most important qualifications for the position and then determine how you will measure those qualifications through the interviewing process.

As appropriate, consider questions that elicit the following: motivation; related-job experience, team player; ability to learn; technical skills; attitude; availability; flexibility; ability to communicate and cooperation.

Once you have decided on 10-15 general and specific job-related questions you plan to use in the interview, transfer these questions to an interview form. This assures that all candidates are asked the same questions and provides you a means of

rating candidates and taking notes.

Before interviewing—identify any problems you have had with the position and develop screening tools to address those concerns. If certain aspects of the job cause people to leave, mention them during the interview, it's better the person refuse the job than to start and quit.

Set your minimum limits, and then consider them carefully. For example: Is high school education mandatory for satisfactory completion of duties? Will you consider similar job experience or training instead?

Be sure minimum standards are based on true need—not bias—otherwise you may lose the opportunity to hire a qualified, stable employee.

## Interview Caution

Flathead HR Toolkit <http://wsd.dli.mt.gov/local/sidney/employers.asp>

- Interviewing is hard work! Watch out for “halo effects.” This happens when you make an immediate, overall judgment about an applicant which results in the applicant getting approximately the same rating on every aspect of the interview. To avoid this, pay close attention to everything the applicant says and then make careful, independent ratings of the applicant’s response to each question.
- Don’t dwell on the negative. Placing greater emphasis on negative information than on positive information defeats the purpose of the interview and again can result in a snap decision or judgment.
- It is your responsibility and in your own best interest to keep the applicant from volunteering information which has no bearing on the selection process. If an applicant volunteers information about spouse, kids, religion, etc. STOP the flow of information and



courteously explain your reason for interrupting and assure the applicant that your company does not base its hiring practices on that particular subject area. If this person does not get the job, he/she can file a complaint saying that you learned during the interview, for example, that she was divorced and has children, and you refuse to hire her for that reason. If discriminatory information is inadvertently revealed during the interview, do not tell others or enter this information anywhere on your application or evaluation forms.

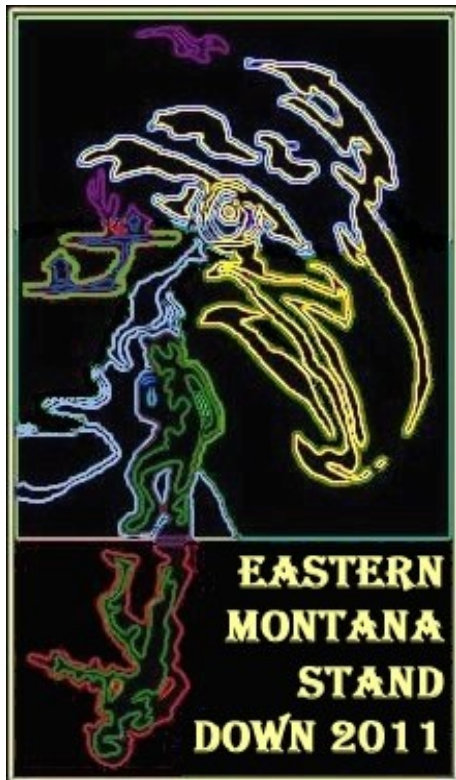
- Avoid leading questions such as, “You left school to go to work?” It is easy for the applicant to answer, “Yes,” even though the real reason might have been expulsion. Rephrase the question to encourage a full explanation. For example, “tell us why you left school.”
- Consider having more than one person interview your applicants. People often tend to hire people like themselves because they feel

# *SECOND ANNUAL* **EASTERN MONTANA STAND DOWN 2011**

*SEPTEMBER 17TH*

*9:00 AM—5:00 PM*

*SIDNEY FAIRGROUNDS EVENT CENTER*



**8:30 OPENING CEREMONY**

## **AVAILABLE SERVICES**

**VETERAN BENEFIT  
INFORMATION**

**MEDICAL SCREENING**

**MENTAL HEALTH  
COUNSELING**

**EMPLOYMENT AND  
EDUCATION  
ASSISTANCE**

**FOR MORE INFORMATION  
CONTACT**

**FEMALE  
VETERANS  
AND FAMILIES  
WELCOME**

**Items for distribution are a first come first serve basis only. No  
Drugs, Alcohol, Weapons or Inappropriate Behavior Allowed!!**

The project is supported by the Richland County Community Foundation. Please Consider helping the Foundation grow a bright future for Richland County and support other projects like this one by making a donation. You can become a member of the Foundation with a donation of \$19.14. For more information, visit <http://www.facebook.com/RichlandCCF>.



MT DEPT OF LABOR & INDUSTRY

SIDNEY JOB SERVICE

Phone: 406-433-1204

Fax: 406-433-7453

211 N Central Ave Sidney MT 59270



## FREE Posters!!!!

The New 5 in 1 Posters are available

FREE

at Sidney Job Service.

No Smoking, MT Minimum Wage and USSERA are also available.

It has come to our attention that many businesses are getting calls and emails to buy posters. Some are very threatening. You do not have to buy these posters. Our office will provide them for free.

The information provided herein is general in nature and intended as a guide only. It is not intended as a substitute for legal advice, to dictate policy, provide direction to your organization or to remove you from the responsibility or addressing your personnel issues. It is recommended that you seek independent legal advice from an appropriate professional to make sure that the general information provided applies to your

### Interview Cautions Cont.

### Test your interview skills

Flathead HR Toolkit

<http://wsd.dli.mt.gov/local/sidney/employers.asp>

comfortable with them. In reality, businesses thrive on diversity because different skills, idea and points of view strengthen an organization. Another option is a “group or panel interview” in which several people interview each applicant at the same time, taking turns asking questions.

- Be attentive and try not to show feelings to responses given, other than to acknowledge. Try the mirror technique where you restate the last part of the answer as though it was a question (example: “And they told you, you were fired?”). Mirroring is especially useful because it asks a question without revealing the interviewer’s bias regarding the answer. Look interested as though you would like to hear more. If that does not work, simply request more information saying something such as, “Tell me more about...” or “What happened then?” When you are unclear what the applicant is saying, try rephrasing what you think you heard to make sure communications are clear. After interviewing BE SURE TO CHECK REFERENCES and use any legal job-related testing you have available.

#### Which of these interview questions are “suspect”?

1. What are your strengths with respect to making decisions?
2. You have an unusual name. What nationality are you?
3. Would you be willing to work for a person who is younger than you?
4. Are you physically able to do this job?
5. Describe how you would handle a complaint from an upset customer.
6. Describe your public speaking experience.
7. Are you supplementing your household income?
8. What do you know about our company?

Suspect questions are #s 2,3,4,7

Answers